

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

IN RE: §  
§ CASE NO. 23-40316-11  
DFW BOAT SPECIALISTS, LLC, §  
§  
DEBTOR. § CHAPTER 11

**LIMITED OBJECTION TO CONFIRMATION OF PLAN OF REORGANIZATION OF  
DFW BOAT SPECIALISTS, LLC, PURSUANT TO SECTION 1190 OF THE  
BANKRUPTCY CODE DATED MAY 3, 2023**

COMES NOW **NextGear Capital, Inc.** (“NextGear”), by and through its counsel, and respectfully files this LIMITED OBJECTION TO CONFIRMATION OF PLAN OF REORGANIZATION OF DFW BOAT SPECIALISTS, LLC, PURSUANT TO SECTION 1190 OF THE BANKRUPTCY CODE DATED MAY 3, 2023 [DOC. # 60] (the “Plan”) filed by debtor **DFW Boat Specialists, LLC** (the “Debtor”). In support of this objection, NextGear states as follows:

**I.  
BACKGROUND FACTS**

1. The Debtor is a Texas limited liability corporation doing business in Texas as an automobile dealer selling new and used motor vehicles to its customers.

2. NextGear is in the business of providing secured financing to car dealers through which those car dealers may finance some or all of their inventory held for resale to retail consumers (“floor plan financing”). On or about June 6, 2022, NextGear and Debtor entered into a Demand Promissory Note and Loan and Security Agreement (the “Note”). A true and correct copy of said Note, including any applicable amendments, is attached hereto and incorporated by reference for all purposes as **Exhibit “A.”**

3. Pursuant to paragraph 2 of the Note, Debtor granted to NextGear a perfected, first-priority blanket security interest in all personal property assets of the Debtor, including but

not limited to the Debtor's motor vehicle inventory ("Inventory Collateral"). The Inventory Collateral includes but is not limited to the following thirty-six (36) unpaid motor vehicle inventory financed by NextGear under the Note by stock number, year, make, model, and VIN:

<b>Stock #</b>	<b>Vehicle Description</b>	<b>VIN</b>	<b>Balance Due Under Note</b>
25	2016 Cadillac CTS	JN8AS5MV6DW616729	\$3,889.39
26	2016 Chevrolet Cruze	1C3CDFBB2FD421663	\$5,170.41
27	2015 Kia Sedona	1G1PC5SB9F7200322	\$3,812.68
28	2016 Ford Focus	1N4AL3AP9FC197787	\$4,740.85
32	2012 Ford Fiesta	5N1AR2MN0DC629169	\$4,718.29
36	2015 Nissan Murano	5N1AZ2MG1FN226021	\$8,218.55
37	2016 Cadillac CTS	1G6AS5SX7G0103225	\$8,998.31
38	2016 Chevrolet Cruze	1G1PE5SB9G7184716	\$5,532.71
39	2015 Kia Sedona	KNDME5C11F6051615	\$5,681.90
40	2016 Ford Focus	1FADP3N26GL244887	\$6,715.82
42	2012 Ford Fiesta	3FADP4EJ4CM121174	\$1,300.11
43	2016 Kia Sorento	5XYPG4A36GG041599	\$2,215.67
44	2017 Mitsubishi Mirage	ML32F3FJ2HHF17411	\$5,013.24
45	2013 Ford Focus	1FADP3F26DL369818	\$1,873.74
49	2020 Chevrolet Malibu	1G1ZD5STXLF009914	\$16,938.14
50	2014 Ford F150	1FTFX1CT5EKE98046	\$9,343.92
51	2016 Mazda CX-5	JM3KE2CY2G0629011	\$8,012.41
53	2018 Kia Stinger	KNAE45LC0J6010424	\$14,474.31
54	2014 Ford Focus	1FADP3F22EL378548	\$960.01
55	2014 Subaru XV Crosstrek	JF2GPAVC9E8332404	\$10,042.92
56	2007 Ford Expedition	1FMFU17577LA12124	\$2,496.24
58	2016 Nissan Altima	1N4AL3APXGC282459	\$6,668.71
59	2013 Hyundai Veloster	KMHTC6AD7DU142820	\$4,401.90
60	2015 Chevrolet Cruze	1G1PD5SB1F7294337	\$5,733.12
61	2013 Mercedes-Benz C Class	WDDGF4HB9DR276033	\$4,356.65
62	2013 Dodge Journey	3C4PDCAB8DT695373	\$3,074.69
63	2013 Nissan Sentra	3N1AB7AP1DL787412	\$3,974.58
64	2012 Dodge Grand Caravan	2C4RDGBG7CR330193	\$3,175.24
65	2014 Chevrolet Malibu	1G11H5SL2EF285153	\$5,202.72
66	2012 Nissan Murano	JN8AZ1MU0CW117516	\$5,127.36
67	2012 Nissan 370Z	JN1AZ4FH0CM370833	\$12,871.75
68	2012 Buick Verano	1G4PR5SK5C4145480	\$3,315.89
69	2007 Chevrolet Suburban	1GNFK16357J153836	\$3,832.12
70	2014 Dodge Grand Caravan	2C4RDGBG4ER361937	\$3,248.73

71	2014 Dodge Grand Caravan	2C4RDGBG4ER361940	\$4,484.10
72	2012 Chevrolet Equinox	2GNALDEK6C6291751	\$4,839.58

(collectively, the “NextGear Inventory”).

4. NextGear’s first priority, perfected lien and security interest in the NextGear Inventory and blanket security interest in all of Debtor’s remaining assets, including but not limited to the other motor vehicle inventory on Debtor’s lot not specifically financed by NextGear, accounts, receivables, chattel paper, and other forms of cash collateral, is evidenced by the following documents:

a. The Note along with all attachments and exhibits thereto. Specifically, paragraph 2 of the Note grants NextGear a first priority security interest in the NextGear Inventory and a blanket security interest in all remaining assets of Debtor, including cash collateral.

b. A UCC-1 Financing Statement filed with the Texas Secretary of State on February 24, 2022, which was assigned file number 22-0009213251. A true and correct copy of the UCC-1 Financing Statement along with all amendments thereto, if any, is attached hereto as **Exhibit “B.”**

c. A Receivable Detail Summary dated February (the “RDS”), which identifies the vehicles currently floor planned by the Debtor with NextGear that remain unpaid. A true and correct copy of the RDS is attached hereto as **Exhibit “C.”**

5. The RDS lists each of the NextGear Inventory vehicles which the Debtor and NextGear (collectively, the “Parties”) agreed to place on the Debtor’s floorplan and for which the original title was tendered by Debtor to NextGear as additional security.

6. The indebtedness under the Note has not been repaid and NextGear retains its first-priority, perfected security interest in the NextGear Inventory, including any sales proceeds generated from the sale of any NextGear Inventory vehicle to any third party.

7. As shown by the RDS, the amount due and owing under the Note as of the Petition Date totaled \$204,456.76 for all unpaid NextGear Inventory vehicles, after the consideration of all lawful offsets, payments, and credits.

8. The NextGear Inventory secures the entire Liabilities of Debtor (as defined in page 15, paragraph (38) of the Appendix to the Note) and not merely a portion thereof.

9. NextGear timely filed its Proof of Claim on May 2, 2023, which was assigned claim # 9 and asserted a secured claim amount of \$121,373.60.

10. As contemplated by the terms of Debtor's proposed Plan of Reorganization filed on May 4, 2023 [Doc. # 60] (the "Plan") and as authorized by the Final Order Authorizing Use of Cash Collateral entered on March 24, 2023 [Doc. # 52], Debtor has been selling various NextGear Inventory vehicles and remitting sales proceeds to NextGear. In turn, NextGear has been releasing titles to the various NextGear Inventory vehicles upon receipt of payments of the sales proceeds of the payoff amount from Debtor. To the extent Debtor is not able to sell all of the NextGear Inventory prior to confirmation of the Plan, Debtor proposes on paying the value of any remaining NextGear Inventory units to be "surrendered" based on the Manheim Market value as stated in an Exhibit "E." However, the Plan does not attach the referenced Exhibit "E" and it is unclear what Debtor is proposing to pay NextGear should it proceed with payment after confirmation of the Plan.

11. In addition, the proposed Plan also seeks to obtain a discharge of a "Claim" or "Debt" immediately upon confirmation under 11 U.S.C. § 1191(a). Such plan language is vague

and it is unclear whether such a discharge effectively extinguishes or discharges the debts owed by related guarantors on the same “Claim” or “Debt.”

**II.**  
**OBJECTION TO DEBTOR’S CASH COLLATERAL MOTION**

12. Pursuant to 11 U.S.C. §§ 1107 and 1108, the Debtor remains in control of the operation of its business.

13. NextGear objects to the proposed Plan on the basis that Debtor failed to attach to its proposed Plan the referenced Exhibit “E.” Without being able to review the Manheim Market values on which Debtor will rely should Debtor pay to NextGear the value of any NextGear Inventory vehicles not otherwise sold prior to confirmation, NextGear does not have the ability to judge whether the proposed values represent a fair valuation of such NextGear Inventory. NextGear should be permitted a full and fair opportunity to ascertain exactly what values and proposed payments Debtor intends to make once the Plan is confirmed, and confirming the proposed Plan without disclosure of such information, or any disclosure statement having been filed at all, will work a potential prejudice and hardship on NextGear and potentially adversely impact and cram down the secured value of NextGear’s claim as to any remaining NextGear Inventory units in the possession of Debtor.

14. NextGear further objects to the language of Article XIII of the proposed Plan regarding discharge, whereby it is unclear whether a discharge of a “Claim” or “Debt” only applies to the Debtor or also potentially applies to third-party guarantors who may also be liable on the same “Claim” or “Debt.” The general rule is that a discharge in bankruptcy does not affect a guarantor's liability. *See* 11 U.S.C. § 524(e) (1994) (“[D]ischarge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.”); *see also N.C.N.B. Texas Nat’l Bank v. Johnson*, 11 F.3d 1260, 1266 (5th

Cir.1994) (holding that to allow a confirmed reorganization plan to effect an accord and satisfaction on a loan guaranty “would defeat the purpose of loan guaranties; after all, a lender obtains guaranties specifically to provide an alternative source of repayment in the event that the primary obligor's debt is discharged in bankruptcy”); *Matter of Sandy Ridge Dev. Corp.*, 881 F.2d 1346, 1351 (5th Cir.1989) (“A discharge in bankruptcy will simply not affect the liability of a guarantor.”). While it is unclear whether Debtor’s proposed language regarding discharge would impact, release, or apply to any third-party guarantor, NextGear files this limited objection in an abundance of caution.

**WHEREFORE, ABOVE PREMISES CONSIDERED,** NextGear respectfully requests that the Court:

- a. Sustain NextGear’s limited objection as set forth herein;
- b. DENY confirmation of the Plan until and unless Debtor amends the proposed Plan provisions to clarify Debtor’s intended treatment of NextGear under the Plan and further clarify that the liability of any third-party guarantor will not be affected or impacted by the Article XIII discharge provision;
- c. For such other and further relief to which NextGear is entitled as this Court may deem just and proper.

**Respectfully submitted,**

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**CERTIFICATE OF SERVICE**

The undersigned converted the foregoing document into an electronic image, via portable document format (.pdf), electronically submitted same to the Internet web portal for the Clerk of this Court utilizing the Electronic Management and Electronic Case Filing system of the Court, which has caused service, via Simple Mail Transfer Protocol (e-mail), of a Notice of Electronic Filing of this imaged document to the below-identified parties on Tuesday, June 6, 2023; said e-mail provides an attributable hyperlink to the document, in portable document format, except for Debtor(s), and any other entity so identified below or on the EM/ECF filing sheet, whereas in that instance such document was mailed via First Class United States Mail, to-wit:

<b>DFW Boat Specialists, LLC</b> 2401 Worthington Dr., Suite 106 Denton, Texas 76207  <i>Debtor</i>	<b>Eric A. Liepins</b> Eric A. Liepins, P.C. 12770 Coit Road, Suite 850 Dallas, Texas 75251  <i>Attorney for Debtor</i>
<b>Mark A. Weisbart</b> 10501 N. Central Expy., Suite 106 Dallas, Texas 75231  <i>Subchapter V Trustee</i>	<b>United States Trustee</b> 110 N. College Avenue, Suite 300 Tyler, Texas 75702
<b>All those receiving ECF notification in this case and on the attached list of the 20 largest unsecured creditors.</b>	

/s/ Christopher V. Arisco

Christopher V. Arisco

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**20 Largest Unsecured Creditors**